REMARKS

This Amendment is responsive to the final Office Action mailed February 17, 2010 (hereinafter "Office Action"). Claims 1-31 and 71 were previously canceled and Claims 32-39, 65-69 and 72-102 were previously withdrawn. By virtue of this Amendment, Claims 43, 49, 50, 54, 55 and 63 are canceled and Claims 103-109 are added. Thus, upon entry of the claim amendments, Claims 40-42, 44-48, 51-53, 56-62, 64, 70 and 103-109 will be pending in the application.

Claims 40-64 and 70 were rejected in the Office Action on the ground of obviousness-type double patenting as being unpatentable over Claims 1-26 of U.S. Patent No. 6,253,237. Claims 40-57, 60-62 and 70 were rejected in the Office Action under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,440,334 (Walters et al.) Finally, Claims 58, 59, 63 and 64 were rejected under 35 U.S.C. § 103(a) as unpatentable over Walters et al.

While applicants respectfully disagree with these rejections, applicants have amended the claims as suggested by the Examiner in an effort to advance prosecution. Thus, applicants request entry of the amendments to, and allowance of, Claims 40-42, 44-48, 51-53, 56-62, 64, 70 and 103-109.

A. Rejection of Claims 40-64 and 70 on the Ground of Non-Statutory Obviousness-Type Double Patenting

Claims 40-64 and 70 were rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-26 of U.S. Patent No. 6,253,237. In response to this rejection applicants submit a Terminal Disclaimer herewith. Accordingly, withdrawal of the double patenting rejection and allowance of Claims 40-42, 44-48, 51-53, 56-62, 64 and 70 (which will remain pending upon entry of the amendments above) are respectfully requested.

B. Claims 40-42, 44-48, 51-53, 56-62, 64 and 70 Are Patentable over Walters et al.

However, as noted by the Examiner in the Office Action and discussed with the Examiner during the telephone interviews, the subject matter related to replacing consumed content at playback times partitioned from a playback period, if claimed with sufficient particularity, would be sufficient to overcome the prior art of record and would likely place the application in condition for allowance. Accordingly, applicants have amended independent Claim 40 as

discussed with the Examiner and have made similar amendments to the remaining independent claims. In addition, applicants have amended the dependent claims to make them consistent with their respective, amended independent claims. In light of the foregoing, applicants request entry of the amendments to, and allowance of, Claims 40-42, 44-48, 51-53, 56-62, 64 and 70.

C. Newly Added Claims 103-109

New Claims 103-105 depend from independent Claim 40, new Claims 106 and 107 depend from independent Claim 46, and new Claims 108 and 109 depend from independent Claim 70. Therefore, these claims are submitted to be allowable for at least the same reasons as their respective independent claims. In addition, these claims include subject matter removed from other claims for purposes of simplification or subject matter found in other dependent claims. Thus, applicants respectfully submit that new Claims 103-109 introduce no new subject mater. In light of the foregoing, applications respectfully request allowance of Claims 103-109.

D. No Disclaimers or Disavowals

Applicants respectfully submit that the claims are in condition for allowance. Furthermore, any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Any remarks referring to only a portion of a claim should not be understood to base patentability on that portion or that the limitation discussed is essential or critical; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, no acquiescence, disclaimer or estoppel is intended or should be implied thereby. Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made only to expedite prosecution of the present application and are without prejudice to the presentation or assertion, in the future, of claims relating to the same or similar subject matter. Applicants may not have presented in all cases, arguments concerning whether the applied references render the claims anticipated or obvious, and applicants reserve the right to later submit additional arguments of patentability. Applicants also reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture

any subject matter supported by the present disclosure. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

E. Conclusion

In view of the amendments and remarks above, applicants respectfully submit that, upon entry of the amendments and new claims set forth above, the above-referenced patent application is in condition for allowance. If any questions remain or if the Examiner intends to issue an Advisory Action, the Examiner is invited to contact applicants' undersigned attorney as soon as possible at the number provided below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 14, 2010

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AMEND

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